

PT 98-33

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**TRUE ROCK PENTECOSTAL
CHURCH,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 93-16-1329

Real Estate Exemption

For 1993 Tax Year

**P.I.N.: 17-22-301-002
17-22-301-003
17-22-301-004**

Cook County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Cathe R. Evans of Thomas E. Vaughn & Associates on behalf of True Rock Pentecostal Church.

SYNOPSIS:

This proceeding raises the limited issue of whether Cook County Parcel Index Numbers 17-22-301-002, 17-22-301-003, and 17-22-301-004¹ (hereinafter collectively “the subject property”), should be exempt from 1993 property taxes as “property used

¹ Each of the three Parcel Index Numbers begins with the same seven digits, “17-22-301.” In the interest of administrative economy, I shall hereinafter refer to each parcel

exclusively for religious purposes” under section 19.2 of the Revenue Act of 1939 (hereinafter the “Act”).² 35 ILCS 205/19.2 (1992).

This controversy arose as follows:

On February 1, 1994, True Rock Pentecostal Church (hereinafter “applicant”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the “Board”). Dept. Group Ex. No. 1, Doc. B. The Board reviewed the complaint and on June 1, 1994, recommended “no action” because the use of the subject property could not be verified. On February 23, 1996, the Illinois Department of Revenue (hereinafter the “Department”) denied the exemption concluding that the applicant did not demonstrate that the subject property was in exempt use or being prepared for exempt use in 1993. The applicant filed a timely appeal seeking to have the subject property exempted for the entire 1993 tax year. On May 15, 1997, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the subject parcel be granted a property tax exemption for the 1993 tax year.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject parcel was not in exempt use or being prepared for exempt use in 1993.

only by the last three digits of its Parcel Index Number. For example, Parcel Index Number 17-22-301-002 will be referred to “Parcel 002.”

² In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable provisions are those found in the Revenue Act of 1939 (35 ILCS 205/1 *et. seq.* (1992)).

2. Parcel 003 is located at 57 East 16th Street in Chicago and is improved with a three-story brick building (hereinafter the “building”). App. Ex. No. 8; App. Gr. Ex. No. 11.
3. In 1993, the building was used almost every day for prayer services, religious meetings, or bible classes. Tr. pp. 24-29; App. Ex. 10.
4. During 1993 the building was remodeled with new paint, carpeting, and some room repairs. Tr. p. 31.
5. Parcels 002 and 004 are open parking areas located behind and adjacent to parcel 003. App. Ex. No. 8; App. Gr. Ex. No. 11. Docs. D, E, F.
6. Chicago Title and Trust Company Trust No. 1097745 acquired title to the subject property in 1992. App. Ex. No. 8.
7. The applicant is the beneficiary of Trust No. 1097745. App. Ex. Nos. 5, 6, 7.
8. The applicant is a religious institution which the Department has previously recognized as being organized and operated exclusively for religious purposes and thus exempt from the retailers’ occupation tax and other related taxes. App. Ex. Nos. 1, 2.
9. The street in front of the building is designated as a no-parking zone. App. Gr. Ex. No. Ex. 11, Doc. F.
10. The subject property was not leased in 1993. Tr. p. 29.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits, and argument, evidence sufficient to warrant a

1993 property tax exemption for the subject property. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, article IX, section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill.2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 19.2 of the Act which exempts from taxation "all property used exclusively for religious purposes *** and not leased or otherwise used with a view to a profit[.]" 35 ILCS 200/19.2 (1992). To qualify for a religious based property tax exemption under section 19.2, the applicant must establish two main facts by "clear and convincing evidence" (Evangelical Hospitals Corp. v. Dep't of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991)). The applicant must show (1) that the subject property was used

exclusively³ for religious purposes, and (2) that the subject property was not leased or otherwise used with a view to a profit.⁴

Here, the applicant presented substantial testimony and documentary evidence showing that in 1993, parcel 003: (1) was used primarily as a church where prayer services, religious meetings, and bible classes were conducted; and (2) was not leased or otherwise used with a view to a profit. Under these circumstances, parcel 003 is entitled to an exemption from 1993 property taxes.

Parcels 002 and 004, unlike parcel 003, did not actually have religious services and meetings conducted on them. Rather, parcels 002 and 004 were simply parking areas. Thus, any exemption for parcels 002 and 004 could not be derived directly from section 19.2 of the Act. Rather, any exemption for parcels 002 and 004 would have to come from section 19.16 of the Act which extends exempt status to:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided hereinbefore and owned by any *** religious or charitable institution which meets the qualifications for exemption.

³ The word “exclusively,” when used in section 15-145 and other tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Gas Research Institute v. Dep’t of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Dep’t of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).

⁴ It is worth noting that in the event the subject property is used as a parsonage, the subject property must also be owned by a religious institution before an exemption will be warranted. Immanuel Evangelical Lutheran Church v. Dep’t of Revenue, 267 Ill App 3d 678 (4th Dist. 1994). Here, however there is nothing to indicate that any portion of the subject property was used as a parsonage.

To qualify for exemption under section 19.16 the applicant must establish that the parking areas were: (1) “reasonably necessary” for the applicant’s exempt purposes (Northwestern Memorial Foundation v. Dep’t of Revenue, 141 Ill. App. 3d 309, 313 (1st Dist. 1986)); (2) not leased or otherwise used with a view to a profit (Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983)); and (3) owned by a religious institution (Faith Christian Fellowship v. Dep’t of Revenue, 226 Ill. App. 3d 322 (1st Dist. 1992)).

Here, the applicant presented evidence showing that the street in front of the building was a no-parking zone. Thus, it was “reasonably necessary” for the applicant to use parcels 002 and 004 as off-street parking for the church. See Northwestern Memorial Foundation, *supra* at 313 (noting that the parking area need not be “absolutely indispensable” and granting an exemption for a parking area located in a densely populated urban area where there was a shortage of parking). The applicant also presented evidence establishing that parcels 002 and 004 were not leased or otherwise used with a view to a profit. Accordingly, the sole remaining question is whether parcels 002 and 004 were owned by a religious institution.

Here, Trust No. 1097745 acquired title to the subject property in 1992. The applicant is the beneficiary of Trust No. 1097745. The beneficiary of a land trust is the owner for tax purposes. People v. Chicago Title & Trust, 75 Ill. 2d 499 (1979). Thus, for tax purposes, the applicant, a religious institution, is the owner of the subject property. Accordingly, parcels 002 and 004 satisfy the prerequisites for exemption under section 9.16 of the Act.

In conclusion, parcel 003 is entitled to an exemption from 1993 property taxes under section 19.2 of the Act, because it was used exclusively for religious purposes and was not leased or otherwise used with a view to a profit in 1993. Parcels 002 and 004 are entitled to exemption from 1993 property taxes under section 19.16 of the Act because parcels 002 and 004 were “reasonably necessary” for the applicant’s exempt religious purposes, not leased or otherwise used with a view to a profit, and owned by a religious institution in 1993.

Therefore, for the reasons stated above, I recommend that Cook County Parcel Index Numbers 17-22-301-002, 17-22-301-003, and 17-22-301-004 be exempted from 1993 real estate taxes.

Date

Robert C. Rymek
Administrative Law Judge